



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 20/11-Sepakor Angkor

Date of Award: 24 February 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

Name: **Sepakor Angkor Co., Ltd (the employer)**

Address: Viheachin Village, Svaydangkom Commune, Siem Reap City, Siem Reap Province

Telephone: 012 428 527

Fax: N/A

Representatives:

- | | |
|-----------------------|--------------------------|
| 1. Ms Kanterin Nop | Head of Human Resources |
| 2. Mr Ridano Kenem | General Secretary |
| 3. Mr Puth Sophea | Head of Production |
| 4. Mr Huon Sokphaneth | Legal Officer of CAMFEBA |

Worker party:

Name: **Building and Wood Workers Trade Union Federation of Cambodia (BWTUC)**

Local Union of BWTUC

Address: Veal Village, Kork Chork Commune, Siem Reap City, Siem Reap Province

Telephone: 012 736 270

Fax: N/A

Representatives:

- | | |
|---------------------|---------------------------------------|
| 1. Ms Ken Chenglang | General Secretary of BWTUC |
| 2. Mr Tep Chhoy | President of the Local Union of BWTUC |

3. Ms Lim Vic Vice-President of the Local Union of BWTUC
4. Mr Chuom Chi Activist of the Local Union of BWTUC

ISSUES IN DISPUTE

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

1. The workers demand that the employer increase their hourly wages by US\$ 0.06. The employer states that it can only afford to increase hourly wages by US\$ 0.03.
2. The workers demand that the employer pay 50% of their wages if they damage a product unintentionally. The employer states that it will continue to pay 35% of the workers' wages if they damage a product because it needs to buy costly raw materials.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour Law (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators No. 133 dated 9 June 2010 (Eighth Term).

An attempt was made to conciliate the collective dispute that is the subject of this award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and non-conciliation report No. 002 MKB dated 21 January 2011 was submitted to the Secretariat of the Arbitration Council on 1 February 2011.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72 Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Quarter, Tuol Kork District, Phnom Penh

Date of hearing: 15 February 2011 at 2:00 p.m.

Procedural issues:

On 4 January 2011, the Siem Reap Provincial Department of Labour Disputes received a complaint from the Local Union of BWTUC outlining the workers' two demands. Upon receiving the claim, the Provincial Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 19 January 2011. Neither issue was resolved. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 1 February 2011 via non-conciliation report No. 002 MKB dated 21 January 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the two non-conciliated issues, held on 15 February 2011 at 2:00 p.m. Both parties were present at the hearing, and requested the Council to further conciliate the two non-conciliated issues. The conciliation resulted in the second issue being resolved. The Arbitration Council considers and decides on the remaining issue in this case as follows.

EVIDENCE

Witnesses & Experts: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Authorisation letter from the employer to Kanterin Nop, dated 2 February 2011.
2. Brief statement on the labour dispute in case 20/11, dated 11 February 2011.
3. Company statute of the employer, dated 16 March 2003.
4. Certificate of commercial registration, No. 0695 PN/CBP dated 10 February 2010.
5. Internal Work Rules of the employer.
6. Table detailing average wages paid to piece rate workers for January-December 2010 and January 2011.
7. Notification from the human resources office of the US\$ 0.03 increase in hourly wages, No. 110104 dated 4 January 2011.
8. Record of negotiation between the employer and the union to increase hourly wages, dated 4 January 2011.
9. Notice from the Siem Reap Provincial Department of Labour and Vocational Training to attend the conciliation session with the Local Union of BWTUC, No. 002 MKB dated 14 January 2011.
10. Record of inquiry for information from the employer's representatives, dated 17 January 2011.
11. Notification from the silk production office regarding solutions for damaged products.

B. Provided by the worker party:

1. Brief statement on the labour dispute in case 20/11, dated 15 February 2011.
2. Letter from the Department of Labour Disputes to the President of the Local Union of BWTUC regarding the union's request for recognition of its new leadership in its second term, No. 666 KB/RK/VK dated 30 July 2009.
3. Certificate of registration of the Local Union of BWTUC, No. 1210 KB/VK dated 22 August 2007.
4. Letter to the employer from the Local Union of BWTUC requesting negotiation on the demand for a wage increase of US\$ 0.06 per hour, dated 30 November 2010.

5. Complaint from the Local Union of BWTUC to the head of the Siem Reap Provincial Department of Labour Disputes alleging that the employer refuses to enter negotiations on the demand for a wage increase, dated 4 January 2011.
6. Record of inquiry for information from the workers' representatives, dated 11 January 2011.
7. Record of conciliation of collective labour dispute, dated 19 January 2011.

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Sepakor Angkor Co., Ltd, No. 002 KB/RK/VK, dated 21 January 2011.
2. Record of collective labour dispute resolution at Sepakor Angkor Co., Ltd, dated 19 January 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 115 KB/AK/VK/LKA dated 7 February 2011.
2. Notice to attend the hearing addressed to the workers, No. 116 KB/AK/VK/LKA dated 7 February 2011.

FACTS

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents;

The Arbitration Council finds that:

- Sepakor Angkor Co., Ltd, a semi-state company, commenced operation in 2003. It is located in Viheachin Village, Svaydangkom Commune, Siem Reap City, Siem Reap Province. It presently employs approximately 1,078 workers.
- There is a union at the factory, the Local Union of BWTUC, established in 2007. The workers state that the Local Union of BWTUC represents 541 workers and collects union contribution fees independently. However, it does not have a certificate of most representative status (MRS).

Issue 1: The workers demand that the employer increase hourly wages by US\$ 0.06.

- The workers demand that the employer increase by US\$ 0.06 the hourly wages of 499 piece rate workers who are members of the Local Union of BWTUC and work in five sections, i.e. weaving, silk, wood sculpture, stone sculpture, colouring, and copper sculpture.

- The employer refuses to accommodate the demand, asserting that it can only afford to increase their hourly wages by US\$ 0.03.
- The workers acknowledge that the employer has increased wages by US\$ 0.03. However, the workers in this case demand another US\$ 0.03 increase, i.e. a total increase of US\$ 0.06, because the employer has increased its profits, evident from the fact that it has sold a large number of products made by the workers before its scheduled arrangement with buyers, it has recruited more workers, and it has arranged a three day trip for workers.
- The workers state that the employer has consistently increased the workers' wages since 2007, except for in 2009 due to the economic crisis. The history of wage increases is as follows:
 - In 2007, the employer increased wages by between US\$ 0.06 and US\$ 0.08 depending on each worker's skill;
 - In 2008, the employer increased all workers' wages by US\$ 0.05;
 - In 2010, the employer increased wages by US\$ 0.04; and
 - In 2011, the employer increased wages by US\$ 0.03. However, the workers demand another US\$ 0.03 increase to reflect the employer's improved economic situation.
- To explain the calculation of wages for piece rate workers, the workers use the example of sculpting wood in the form of Phkaduong Apsara (a specific type of sculpture). The employer pays 50 hours' wages for each completed statue of Phkaduong Apsara, and for each hour they are paid US\$ 0.39. If a worker makes ten statues of Phkaduong Apsara per month, he/she will be paid 50 hours' wages (the rate for each statue of Phkaduong Apsara) multiplied by ten statues, then multiplied by the hourly wage of US\$ 0.39. Therefore, the worker will receive a total wage of US\$ 195 per month. The employer does not object to the workers' account of wage calculation.
- The workers state that on average, piece rate workers earn from US\$ 70 to US\$ 150 per month. The time allotted by the employer for making a statue does not pose a problem for them and they can complete the work on time.
- The employer states that the workers at the factory are categorised into two groups: piece rate workers and regular workers, e.g. business and administrative staff and craftsmen in other sections. The workers do not object to the employer's statement.

- The employer says in its brief statement on the labour dispute, dated 11 February 2011, that each craftsman is supposed to work approximately 192 hours per month excluding overtime. Overall, each craftsman is allocated approximately 342 production hours per month. The workers do not object to the employer's statement.
- The employer also says in its brief statement that the average rate for the workers in each section is US\$ 0.37 per hour of production. The workers do not object to the employer's statement.
- The employer states that it has increased piece rate wages by US\$ 0.03 per production hour, effective from 1 January 2011. The increase boosted the average wages of 503 craftsmen for January 2011 from US\$ 127 to US\$ 142, with an average of 356 production hours.
- The employer states that it determines the wage rate for production hours based on the market, purchase orders by clients, and its economic situation. It also holds a discussion with the craftsmen each year regarding the wage rate.
- Lastly, the employer refuses to increase wages by another US\$ 0.03 per production hour because the price of raw materials has increased, as well as production costs. The January wage increase of US\$ 0.03 compelled the employer to increase the sale price of silk by 15%. In fact, figures for February 2011 show that the amount of silk sold decreased due to the increase in the sale price. In addition, a large number of stone sculptures and polychromes (from the colouring section) remain unsold. Further, the employer plans to relocate its factory and requires a certain amount of money for the relocation. The workers do not object to the employer's argument.
- The employer argues that this dispute is an interests dispute because it has no basis in the law or the terms of a collective agreement.
- Both parties state that they do not have an agreement or a collective agreement regarding the issue of a wage increase.

REASONS FOR DECISION

Issue 1: The workers demand that the employer increase hourly wages by US\$ 0.06.

In this case, the employer has increased the workers' wages by US\$ 0.03 per production hour. However, the workers demand another US\$ 0.03 for a total increase of US\$ 0.06. The employer refuses to accommodate the demand. The Arbitration Council considers whether the employer is obliged to increase wages by another US\$ 0.03.

Clause 24 of the employer's Internal Work Rules dated March 2008 states:

Increase of wage and salary: the employer will consult with the management to increase wage or salary based on the position of each worker. This increase must be linked to the good [economic] situation of the employer and performance of craftsmen. The increase is classified as individual or collective.

Individual increase of wage or salary: this increase is made by the management of the employer based on the improvement and performance of each worker.

Collective increase of wage or salary: based on the market situation and the situation of the employer, the management shall increase the salary or wage rate.

Based on this rule, the Arbitration Council considers that the increase of wage or salary is linked to the good [economic] situation of the employer and the performance of craftsmen and is made in consultation with the management. A collective salary increase is based on the market and the situation of the employer.

In this case, the workers demand that the employer increase the hourly wage by US\$ 0.06. The employer argues that it cannot afford to increase wages by US\$ 0.06, only by US\$ 0.03 because the price of raw materials has increased and the number of products sold has decreased since it raised the selling price. Moreover, a large number of stone sculptures and polychromes (colouring section) remain unsold, and the employer requires a certain amount of money for factory relocation.

The Arbitration Council is of the view that the employer has fulfilled its obligations under the Internal Work Rules by assessing its situation and the market situation before deciding whether to increase the wage rate. Furthermore, the Internal Work Rules do not stipulate that there must be a wage increase of US\$ 0.06.

The Arbitration Council considers that the workers do not have a legal basis or any agreement to substantiate their claim, thus making this an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant union has MRS. In previous Arbitral Awards, the Arbitration Council has declined to consider an interests dispute if the union bringing the dispute to the Council does not have MRS (*see AAs 81/04-Evergreen, Reasons for Decision, Issue 4; 09/05-Kin Tai, Reasons for Decision, Issue 2; 84/07-Yung Wah 2, Reasons for Decision, Issue 1; 108/07-8 Star Sportswear, Reasons for Decision, Issue 3; 135/07-Wilson, Reasons for Decision, Issue 1; 14/08-Quicksew, Reasons for Decision, Issue 3; 101/08-GDM, Reasons for Decision, Issue 3; and 42/09-River Rich, Reasons for Decision, Issue 2*).

The Arbitration Council considers that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and gives it legal standing to

bring an interests dispute before the Arbitration Council for resolution (see AAs 81/04-Ever Green; 60/04-United Art, Reasons for Decision, Issue 3; and 08/07-Siu Quinh, Reasons for Decision, Issue 3).

The Arbitration Council applies the abovementioned interpretation in this case. The Arbitration Council finds that the Local Union of BWTUC does not hold MRS. Therefore, the union does not have legal standing to bring an interests dispute to the Council for resolution. As a result, the employer is not obliged to increase wages by an additional US\$ 0.03.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer increase hourly wages by US\$ 0.06.

Based on the above facts, legal principles, and evidence, the Arbitration Council makes its decision as follows:

DECISION AND ORDER

Issue 1: Decline to consider the workers' demand that the employer increase hourly wages by US\$ 0.06.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: